

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PATRICIA DAWSON)	
Claimant)	
VS.)	
)	
STATE OF KANSAS)	Docket No. 1,044,408
Respondent)	
AND)	
)	
STATE SELF INSURANCE FUND)	
Insurance Fund)	

ORDER

Respondent and its insurance fund appealed the July 29, 2010, Award entered by Administrative Law Judge Brad E. Avery. The Workers Compensation Board heard oral argument on October 15, 2010.

APPEARANCES

John M. Ostrowski of Topeka, Kansas, appeared for claimant. Bryce D. Benedict of Topeka, Kansas, appeared for respondent and its insurance fund (respondent). Stacy Parkinson was appointed by Seth G. Valerius, Workers Compensation Acting Director, to serve as a Board Member Pro Tem in place of former Board Member Carol Foreman, who retired from the Workers Compensation Board.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a May 1, 2008, accident that occurred while claimant was in Boston, Massachusetts, attending a conference on behalf of respondent. Claimant injured her back after exiting a taxi cab and slipping while going up steps to enter a hotel. The Administrative Law Judge (ALJ) found claimant suffered a compensable injury and awarded claimant benefits based upon a 10 percent whole body functional impairment for her back injury.

Respondent contends claimant's employment did not put her at any increased risk for the type of injury she sustained and, therefore, her claim is not compensable under the Workers Compensation Act (Act).

Claimant contends that since her travel to Boston was intrinsic to her employment, her claim is compensable under the Act. Claimant maintains the entire trip, from when she left Topeka, Kansas, to when she returned, was covered under the special purpose exception to the "going and coming rule" of K.S.A. 44-508(f) and the claim arose out of and in the course of employment. With regard to whether claimant's injury (a compression fracture) was a result of a disability from an activity of daily living, claimant contends it is the combination of her preexisting osteoarthritis and the incident in Boston that led to the compression fracture and that the axial load she sustained resulted in an acute compression fracture. Therefore, claimant argues the activities of daily living defense does not apply.

The sole issue raised on review before the Board is whether claimant suffered accidental injury arising out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

Claimant has been employed by respondent for over 19 years and worked as a unit manager. She was heading to Boston, Massachusetts, for an Interstate Compact on Placement of Children (ICPC) national conference. After landing in Boston, claimant took a taxi from the airport to her hotel. On May 1, 2008, claimant suffered an injury and describes it as follows:

As I was getting out of the cab to get into the hotel to check in, I slipped off of a step and I tried to steady myself. I turned real quick, I tried to hold on to a wall, and I kind of fell into the wall. I couldn't steady myself. And I had a lot of back pain immediately.¹

A bellman who was helping claimant get her luggage into the hotel witnessed the accident.

Q. Can you describe the step that you're talking about for the judge?

A. The entrance I was going in at the hotel, the hotel was level, but it was on a hill, so there was one step, but as you went down one side, it was bigger at one end,

¹ R.H. Trans. at 7

*the step was bigger at one end and smaller at one end because the hotel was level and it was on a hill.*²

Claimant sought medical treatment at an emergency room on May 3rd and May 5, 2008. She only attended some sessions of the conference due to her back pain. Claimant changed her flight plans home so that she had a direct flight and also had wheelchair assistance provided at the airport.

Respondent provided claimant authorized medical treatment with Dr. Howard Wilcox. The doctor performed a vertebroplasty. Claimant testified that she did not have any problems with her back prior to this injury. She has returned to her regular job for respondent.

Only those accidents that arise out of and in the course of employment are compensable under the Workers Compensation Act.³ For an accident to arise out of employment, there must be a causal connection between the accident and the nature, conditions, obligations, or incidents of the employment.⁴ The requirement that the accident occur in the course of employment relates to the time, place, and circumstances under which the accident occurred and means the accident happened while the worker was working for the employer.⁵ In *Newman*, the Kansas Supreme Court held:

The two phrases, arising 'out of' and 'in the course of' the employment, as used in our workmen's compensation act (K.S.A. 1972 Supp. 44-501), have separate and distinct meanings, they are conjunctive and each condition must exist before compensation is allowable. The phrase 'in the course of' employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase 'out of' the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises 'out of' employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises 'out of' employment if it arises out of the nature, conditions, obligations and incidents of the employment.⁶

² *Id.* at 7-8.

³ See K.S.A. 44-501.

⁴ See *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973); *Martin v. U.S.D.* No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980); and *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979).

⁵ See *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 197, 198, 689 P.2d 837 (1984).

⁶ *Newman*, 212 Kan. 562 at Syl. ¶ 1.

Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to the particular case.⁷

Virtually every jurisdiction which has considered employer-directed errands have found injuries to be compensable if an employee is injured while on an errand or some special mission for the employer.

Where harm occurs to an employee while he is off the premises of his employer, but while engaged on an errand, or a special mission or duty, in his service, the harm may be compensable; where an employee is injured at a place which he went pursuant to the employer's instructions, the mere fact that such place is not the employee's usual place of employment is not controlling. Where an employee is on a special mission for his employer, he is covered by the act from the beginning of the mission to the end of the return journey.⁸

The Kansas Court of Appeals has also held when the travel was an incident of the employment injuries incurred while going and coming from places where work-related tasks occur can be compensable where the travel is required in order to complete a special work-related errand or special-purpose trip in the scope of employment.⁹

It was undisputed that claimant was on a business trip at the direction of respondent when the accident occurred. In the July 29, 2010 Award, Judge Avery found:

While the *Halford* [*v. Nowak Const. Co.*, 39 Kan. App. 2d 935, 186 P.3d 206, *rev. denied* ___ Kan. ___ (2008)] case dealt with the 'coming and going rule,' see K.S.A. 44-508(f), the Court finds it significant that the [Court of Appeals] stated the hazards encountered on a trip are unitary or indivisible and compensability extends to 'the normal risks involved in completing the task or travel,' i.e. when an employee travels at the behest of [the] employer, there is no distinction between risks that are part of the employment and those that are not. When the risk is inherent in the travel itself, it is compensable. Certainly, slipping or falling from a wet step after exiting a cab is what could be considered a normal risk of traveling and is therefore a compensable accident.

It is the finding of the Court that the nature of claimant's injury was incidental to her work and that the accident was a normal risk in completing the assigned trip by her employer and that it arose out of her employment.¹⁰

⁷ *Id.* at Syl. ¶ 3, citing *Carter v. Alpha Kappa Lambda Fraternity*, 197 Kan. 374, 417 P.2d 137 (1966).

⁸ 99 C.J.S. *Workers' Compensation* § 231.

⁹ *Brobst v. Brighton Place North*, 24 Kan. App. 2d 766, Syl. ¶ 3, 955 P.2d 1315 (1997).

¹⁰ ALJ Award (July 29, 2010) at 3.

The Board agrees and affirms.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Brad E. Avery dated July 29, 2010, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February, 2011.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John M. Ostrowski, Attorney for Claimant
Bryce D. Benedict, Attorney for Respondent and its Insurance Fund
Brad E. Avery, Administrative Law Judge